

KATHLEEN M. SMYTH

IBLA 72-145

Decided December 20, 1972

Appeal from a decision by the Anchorage, Alaska, State Office, Bureau of Land Management, rejecting appellant's application to purchase and canceling headquarters site claim A-058547.

Affirmed.

Alaska: Headquarters Sites

A headquarters site application is properly rejected where the appellant fails to produce any probative evidence that the land claimed as a headquarters site was used in connection with a productive industry within the meaning of the headquarters site law. 43 U.S.C. § 687a (1970).

Alaska: Headquarters Sites -- Hearings -- Rules of Practice: Hearings

A hearing will not be granted in connection with a headquarters site application where the applicant fails to allege probative facts which if proved would entitle her to favorable consideration of her application.

APPEARANCES: Kathleen M. Smyth, pro se.

OPINION BY MR. GOSS

Kathleen M. Smyth has appealed from an Alaska State Office decision dated September 20, 1971, which rejected her application to purchase a headquarters site pursuant to the Act of March 3, 1927, as amended, 43 U.S.C. § 687a (1970), and which canceled the headquarters site claim.

The pertinent part of 43 U.S.C. § 687a (1970) reads:

\* \* \* any citizen of the United States twenty-one years of age who is himself engaged in trade, manufacture, or other productive industry may purchase one claim, not exceeding five acres, of unreserved public lands, \* \* \* in Alaska, as a homestead or headquarters, under rules and regulations to be prescribed by the Secretary of the Interior, \* \* \*

Departmental regulation 43 CFR 2563.1-1(a) requires that the application to purchase show:

- (2) The actual use and occupancy of the land for which application is made for a homestead or headquarters.

\* \* \* \*

- (4) The nature of the trade, business, or productive industry in which applicant or his employer, whether a citizen, an association of citizens, or a corporation is engaged.
- (5) The location of the tract applied for with respect to the place of business and other facts demonstrating its adaptability to the purpose as a homestead or headquarters. (Emphasis added.)

According to 43 CFR 2563.1-2, headquarters site applications will be carefully scrutinized to see that the lands applied for are used for the purposes contemplated by the headquarters site law.

Appellant filed her notice of claim on January 2, 1963. Subsequently by letter dated August 12, 1966, appellant inquired as to whether she could refile her application, to obtain a homesite rather than a headquarters site. She stated that her husband had been very ill for two years and that she could not fish or trap or build a residence without him. Unfortunately, Mr. Smyth's illness continued through November 10, 1971.

By statute, 43 U.S.C. § 687a-1 (1970), an application to purchase a headquarters site claim must be filed, along with the required proof or showing, within five years after the filing of the notice of claim. Appellant filed her application to purchase on January 3, 1968, the date on which the statutory life of her claim was to expire. Appellant stated in her application that the headquarters site claim was used for trapping in 1962-65, for training dogs and hunting, and for fishing by Jamie C. Smyth in the summer of 1965. On appeal appellant claims that her son fished and trapped there for two winters, fished during the spring months and "my son traded furs we used the fish." There is no allegation that any of the persons listed were employed by appellant, or that she - a full time school teacher who is 64 and "practically disabled" - is herself engaged in trapping, fishing, hunting or dog training.

In order to comply with 43 CFR 2563.1-1(a) appellant must show that she was using the land claimed as a headquarters site for a "productive industry" and "other facts demonstrating its [the site's]

adaptability to the headquarters purpose." The burden is on appellant to show that she has complied with the law and is entitled to a patent. Lee S. Gardner, A-30586 (September 26, 1966).

Appellant concedes that the trapping and fishing did not constitute a "profitable business," but argues that none of the sites in the area are profitable. Neither the statute nor the regulations require appellant to show a profitable business. The statutory requirement is that appellant show that the headquarters site is used in connection with a productive industry. Even assuming appellant in good faith attempted to comply with the statute and regulations, her assertion that the site was used for trapping and fishing during various seasons of the year, without evidence of, at least, some customer trade and gross receipts, cannot support the requirement of showing a productive industry. Cf. James E. Allen, A-30085 (February 23, 1965).

Appellant has not requested a hearing, and a hearing will not be granted unless there is a dispute as to an essential fact. 1/ Appellant had ample opportunity to allege the probative facts necessary. Hershel E. Crutchfield, A-30876 (September 30, 1968).

In this case appellant's application was properly rejected because she did not allege probative facts, which, if proved, would show that she was engaged in and using the land claimed as a headquarters site for a productive industry within the meaning of the headquarters site law. Cancellation of appellant's claim was proper since the five-year statutory life of the claim expired without an acceptable application to purchase having been filed. 43 U.S.C. § 687a-1 (1970).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss, Member

We concur:

Martin Ritvo, Member

Frederick Fishman, Member.

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1/ For the proper procedure to be followed in contests, see Martha J. Jillson, 6 IBLA 150 (1972).

